

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

FEDEX GROUND PACKAGE SYSTEMS, INC.)

Plaintiff,)

v.)

ROUTE CONSULTANT, INC.,)

Defendant.)

Case No. 3:22-cv-00656

JURY DEMANDED

ROUTE CONSULTANT INC.'S MOTION TO DISMISS

Defendant Route Consultant, Inc. (“Route Consultant”) respectfully moves the court to dismiss the Complaint (Doc. No. 1) filed by FedEx Ground Package Systems, Inc. (“FedEx Ground”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Although the Complaint purports to state causes of action against Route Consultant for “false advertising” under the Lanham Act (15 U.S.C. § 1051, *et seq.*) and the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.* (“TCPA”), Route Consultant is not a competitor of FedEx Ground; nor does the Complaint allege that Route Consultant is making false statements about its own services or those of FedEx Ground.

Rather, the Complaint is directed at statements made by Spencer Patton. Mr. Patton owns Route Consultant and various other businesses, including four (4) contracted service providers (“CSPs”), who were parties to contracts for the delivery of FedEx Ground packages until FedEx Ground terminated such contracts one (1) day after the Complaint was filed. FedEx Ground’s Complaint is directed at communications from Mr. Patton pleading with FedEx Ground to address the dire economic problems facing all CSPs (including his own) and advocating on their behalf for fairer treatment from FedEx Ground. This is not false advertising and the statements are not “purely commercial” in nature. The filing of the Complaint by FedEx Ground is a blatant effort

to silence Mr. Patton and to punish him for speaking out. The Complaint fails to state a claim against Route Consultant and must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

In support of its motion, Route Consultant files its accompanying memorandum of law, and copies of the following documents referenced in FedEx Ground's complaint:¹

- Exhibit A:** July 20, 2022 Letter of Assurance from Mr. Patton;
- Exhibit B1:** A certified transcript of the 13-minute video titled "FedEx Ground: A Letter of Assurance";
- Exhibit B2:** A certified transcript of the 3-minute video titled "In brief: A Letter of Assurance" that describes the Letter of Assurance;
- Exhibit B3:** A certified transcript of the 50-minute video titled "Discussion of Letter of Assurance to FedEx Ground;"
- Exhibit B4:** A certified transcript of the 7-minute video entitled "A Follow-Up to our Conversations with FedEx Ground;"
- Exhibit B5:** A certified transcript of the August 10, 2022 video soliciting nominations for a 10-person trade association to promote the common interests of its members; and
- Exhibit B6:** A certified transcript of the August 24, 2022 video titled "2022 Expo Recap & Initial Address of FedEx Ground TSP Rate Announcement."
- Exhibit C:** Press Release dated July 20, 2022
- Exhibit D:** July 27, 2022 Letter from John Smith at FedEx Ground to all CSPs addressing the Letter of Assurance.

¹ These documents, referenced in the Complaint, may be considered properly by this Court without converting the motion into a motion for summary judgment. *See Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir. 2008) ("When a court is presented with a Rule 12(b)(6) motion, it may consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the Complaint and are central to the claims contained therein."); *see also Alsbrook v. Concorde Career Colleges, Inc.*, 469 F. Supp. 3d 805, 822–23 (W.D. Tenn. 2020) and *Campbell v. Prometheus Lab'ys, Inc.*, No. 3:07-0558, 2008 WL 237723, at *1 (M.D. Tenn. Jan. 28, 2008).

Respectfully submitted,

/s/ Brian C. Neal

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the parties listed below via the Court's CM/ECF system on this 19th day of September, 2022:

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/s/ Brian C. Neal